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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 ARNOLD JAQUEZ, an individual, and all
14 Aggrieved Employees,

15 Plaintiff,

16 v.

17 GRANITE ROCK COMPANY, a California
18 corporation; and DOES 1 through 100,
inclusive,

19 Defendants.

Case No.

[Santa Clara Superior Court Case No.
21CV387540]

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1331, 1441 &
1446 [Federal Question]**

[State Court Complaint Filed: August 19,
2021]

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA:**

Please take notice that Defendant GRANITE ROCK COMPANY (“Graniterock” or “Defendant”), hereby removes the matter of *Arnold Jaquez, et al. v. Granite Rock Company, et al.*, pending in the Superior Court of the State of California in and for the County of Santa Clara, Case No. 21CV387540, to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1331, 1441(b), and 1446.

Removal is proper based on federal question jurisdiction under Section 301 of the Labor Management Relations Act of 1947 (“LMRA,” 29 U.S.C. § 152(2)), 28 U.S.C. §§ 1331, 1441(b) and 1446, as discussed in detail below:

I.

CLAIMS AND PROCEDURAL HISTORY

1. On August 19, 2021, Plaintiff Arnold Jaquez (“Plaintiff”) filed a complaint in the Superior Court of California, County of Santa Clara, Case No. 21CV387540 (“the Complaint”).

2. In the Complaint, Plaintiff asserts the following causes of action: (1) meal period violations; (2) rest period violations; (3) failure to pay minimum wage; (4) wage statement violations; (5) waiting time penalties; (6) violation of unfair competition laws; (7) Private Attorneys General Act, California Labor Code § 2698 et seq. (“PAGA”); and (8) wrongful termination. Plaintiff’s PAGA claim is brought on his own behalf as well as on behalf of all “Aggrieved Employees,” which he defines as “all other nonexempt employees employed by Defendants [*sic*] in California” between June 4, 2020 through judgment or settlement approval. (Compl. ¶¶ 8-9.) Each of the Labor Code claims Plaintiff alleges on his own behalf, with the exception of his Labor Code section 1102.5 retaliation and wrongful termination claim, are incorporated into Plaintiff’s PAGA claim for penalties.

3. The Complaint did not expressly enumerate any claim under federal law and omits that the terms and conditions of Plaintiff’s employment were subject to Collective Bargaining

1 Agreement (“CBA”). True and correct copies of the Summons and Complaint in this case are
 2 filed concurrently herewith as **Exhibit A**.¹

3 4. Defendant filed its Answer to Plaintiff’s Complaint in Superior Court on December
 4 7, 2021, a copy of which is attached hereto as **Exhibit B**.

5 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c) and 1391.

6 **II.**

7 **TIMELINESS OF REMOVAL**

8 6. Service of the Summons and Complaint were effected on Graniterock on
 9 November 8, 2021 via a Notice of Acknowledgment of Receipt of the Summons and Complaint
 10 (“NAR”), signed and returned to counsel of Plaintiff on the same date. A true and correct copy of
 11 the NAR is attached as **Exhibit C**. This Notice of Removal is timely filed in that it has been filed
 12 within thirty (30) days after service of the Summons and Complaint by Defendant, as required by
 13 29 U.S.C. § 1446(b).

14 **III.**

15 **FEDERAL QUESTION JURISDICTION**

16 **BASED ON LMRA SECTION 301 PREEMPTION**

17 7. This Court has original jurisdiction under 28 U.S.C. § 1331, and this case may be
 18 removed pursuant to the provisions of 28 U.S.C. § 1441(b), in that it is a civil action that presents
 19 a federal question.

20 8. Federal question jurisdiction arises out of the fact that Plaintiff’s claims arise from
 21 rights that exists solely from the CBAs, and/or because adjudication of Plaintiff’s claims require
 22 interpretation of a CBA. Thus, Plaintiff’s claims are completely preempted by federal law under
 23 the LMRA. 29 U.S.C. § 185 (“Section 301”). Section 301 provides that: “[s]uits for violation of
 24 contracts between an employer and a labor organization representing employees in an industry
 25 affecting commerce . . . may be brought in a district court for the United States having jurisdiction
 26 of the parties without regarding to the amount in controversy or without regarding to the

27 ¹ Defendant asks the Court to take judicial notice of the exhibits attached to this Notice of
 28 Removal, all of which are pleadings filed in state court in this matter.

1 citizenship of the parties.” *Id.* To ensure uniform interpretations of collective bargaining
2 agreements such as the CBA, federal common law preempts the use of state contract law in
3 collective bargaining agreement interpretation and enforcement. *See Lingle v. Norge Div. of*
4 *Magic Chef, Inc.*, 486 U.S. 399, 411 (1988).

5 9. Further, all state law claims raised by a union-represented employee regarding a
6 right that exists solely from the CBA or that require interpretation of a collective bargaining
7 agreement must be brought pursuant to Section 301. *Curtis v. Irwin Industries, Inc.*, 913 F.3d
8 1146, 1152-1153 (9th Cir. 2019); *Allis-Chalmers Corp. v. Lueck*, 571 U.S. 202, 211 (1985). “The
9 preemptive force of section 301 is so powerful that it displaces entirely any state cause of action
10 for violation of a collective bargaining agreement . . .[and] any state claim whose outcome
11 depends on analysis of the terms of the agreement.” *Newberry v. Pac. Racing Ass’n*, 854 F.2d
12 1142, 1146 (9th Cir. 1988); *see Voorhees v. Naper Aero Club, Inc.*, 272 F.3d 398, 403 (7th Cir.
13 2001) (noting that Section 301 is one of “only two areas in which the Supreme Court has found
14 that Congress intended completely to replace state law with federal law for purposes of federal
15 jurisdiction”).

16 10. Section 301 specifically has been held to preempt California state law claims that
17 are substantially dependent upon interpretation of a collective bargaining agreement. *Firestone v.*
18 *Southern Cal. Gas. Co.*, 219 F.3d 1063, 1066-1067 (9th Cir. 2000). This is so even where
19 interpretation was required to evaluate the employer’s defense to a plaintiff’s state law causes of
20 action. *See Levy v. Skywalker Sound*, 108 Cal. App. 4th 753, 769 (2003) (claim for unpaid wages
21 preempted because it “rest[ed] entirely” on a claim that plaintiff was “entitled . . . to wages at the
22 level set by the CBA”).

23 11. As discussed in detail below, virtually all of Plaintiff’s claims arise solely out of a
24 valid collective bargaining agreement (the CBA) or are derivative of such claims. The Labor
25 Code sections or IWC Wage Order sections Plaintiff seeks recovery under explicitly state they do
26 not apply where a valid collective bargaining agreement exists. This is true for Plaintiff’s meal
27 period claim, his rest period claim, as well as his PAGA claim. Thus, while Plaintiff’s Complaint
28 is ostensibly based on state law rights, it is in fact based on the CBA which is the sole source of

1 those rights pursuant to California law. Further, the CBA provides that the “exclusive” remedy for
 2 such claims is the grievance and arbitration process laid out in the CBA. The remaining claims are
 3 either derivative of these CBA-based claims or require substantial interpretation of the CBA to
 4 resolve, requiring preemption even if the Court were to conclude that these remaining claims are
 5 based on state claims. Indeed, even statutory state law claims under the Labor Code and IWC
 6 Wage Order 16 that are not explicitly covered by the CBA are encompassed by the CBA’s
 7 grievance and arbitration procedure.

8 **A. Plaintiff’s Employment Was Governed by a CBA.**

9 12. Plaintiff was an employee of Graniterock between October 2016 through
 10 November 2, 2020, when his employment was terminated for lying to the Company in its
 11 investigation of a workplace harassment complaint. (Declaration of Shirley Ow (“Ow Dec.”), ¶
 12 5.) The terms and conditions of Plaintiff’s employment are subject to the CBA negotiated
 13 between United Contractors (“UCON”), of which Graniterock is a member, and Operating
 14 Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO (the
 15 “Union”), of Plaintiff which is a member. (*Id.*, ¶ 7.) A true and correct copy of the active and
 16 operative CBA in effect (from July 1, 2020 through June 30, 2023) for Plaintiff is attached as
 17 Exhibit 1 to the concurrently-filed Ow Declaration. A true and correct copy of the prior CBA
 18 negotiated by the Union and UCON (in effect from July 1, 2016 through June 30, 2020) is
 19 attached as Exhibits 2 and 3 to the Ow Declaration and contains substantively similar provisions,
 20 though the section references may vary slightly.²

21 13. The Union is a labor organization within the meaning of Section 2(5) of the
 22 National Labor Relations Act and 301(a) of the LMRA, 29 U.S.C. §§ 152(5) and 185(a), and is the
 23 “exclusive bargaining representative” for employees covered by the CBA, including Plaintiff (Ow
 24 Dec., ¶ 7, Ex. 1), for the purposes of collective bargaining to establish rates of pay, hours of work
 25 and other conditions of employment. (*See* Ow Dec., Ex. 1, p. 29, § 02.08.03.)

26 14. Graniterock is an employer within the meaning of the LMRA, 29 U.S.C. § 152(2).

27 ² For ease of reference, the provisions cited herein are reference the CBA in effect from July 1,
 28 2020 through June 30, 2023.

1 15. UCON is an authorized representative and agent of Graniterock, under 29 U.S.C. §
 2 152(2) and the applicable CBAs, with respect to collective bargaining during the relevant period.
 3 (See Ow Dec., Ex. 1, p. 29, § 02.08.01.)

4 **B. Plaintiff's Claims Are Preempted by the LMRA Because They**
 5 **Arise Out of or Require Substantial Interpretation of the CBA.**

6 **1. Plaintiff's Failure to Reference Section 301 of the LMRA**
 7 **in His Complaint Does Not Preclude Removal.**

8 16. The Complaint omits the fact that Plaintiff was a member of the Union and
 9 employed by Graniterock through a CBA. However, a plaintiff may not be permitted to “artfully
 10 plead” his complaint to conceal the true nature of the complaint. *Young v. Anthony's Fish Grottos,*
 11 *Inc.*, 830 F.2d 993, 997 (9th Cir. 1987) (holding that plaintiff's state law claim was preempted
 12 even though operative complaint made no mention of a collective bargaining agreement);
 13 *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189, 191 (9th Cir. 1983), overruled in part on
 14 other grounds in *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241 (9th Cir. 2009). Thus, the
 15 fact that Plaintiff has not made specific reference to Section 301 or the CBA in the Complaint does
 16 not preclude removal. *See Milne Employees Ass'n v. Sun Carriers, Inc.*, 960 F.2d 1401, 1406 (9th
 17 Cir. 1991). The Court may properly look beyond the face of the Complaint to determine whether
 18 the claims asserted are in fact preempted by Section 301. *See Lippitt v. Raymond James Financial*
 19 *Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003). Additionally, the Court may properly look to
 20 the facts stated in the Notice of Removal “to clarify the action a plaintiff presents and to determine
 21 if it encompasses an action within federal jurisdiction.” *Schroeder*, 702 F.2d at 191.

22 17. Moreover, presumably to avoid preemption (as IWC Wage Order 16 contains
 23 several exemptions to the state's wage and hour requirements for employees subject to valid
 24 collective bargaining agreements), Plaintiff inaccurately alleges that he is subject to IWC Wage
 25 Order 4 rather than IWC Wage Order 16. IWC Wage Order 16 states that it “shall apply to *all*
 26 *persons employed in the on-site occupations of construction*, including, but not limited to, work
 27 involving alteration, demolition, building, excavating, renovation, remodeling, maintenance,
 28 improvement, and repair work, and work for which a contractor's license is required by the
 California Business and Professions Code Division 3, Chapter 9, §§ 7025 et seq.” 8 Cal. Code

1 Regs. § 11160(1). Despite having supervisory responsibilities later in his employment and
 2 through termination and holding the title “Field Supervisor,” Plaintiff was at all relevant times an
 3 Operating Engineer, a job title explicitly identified by the DLSE as falling under IWC Wage Order
 4 16 in its publication, “Which IWC Wage Order?” *See* DLSE, *Which IWC Wage Order?*
 5 *Classifications*, p. 31 (available at <https://www.dir.ca.gov/dlse/whichiwcorderclassifications.pdf>).
 6 Graniterock is a construction materials and contracting company, and Plaintiff was employed
 7 within its Construction Division working on and at times overseeing *on-site* construction work for
 8 which Graniterock required and carried a contractor’s license under California Business and
 9 Professions Code Division 3, Chapter 9, §§ 7025 et seq. (Ow Dec., ¶¶ 4, 6.) IWC Wage Order 4,
 10 on the other hand, applies to professional, technical, clerical, mechanical and similar
 11 occupations—none of which describe Plaintiff’s occupation as a nonexempt, on-site Operating
 12 Engineer for a construction firm. 8 Cal. Code Regs. § 11140. Curiously, Plaintiff makes no
 13 mention of the industry within which he was employed (construction) or allege that he was
 14 required to be at construction sites as a part of his daily responsibilities, but he does concede that
 15 part of his job responsibilities were to attend safety meetings on-site, go through security
 16 checkpoints to get onto constructions sites on a regular basis, and prepare heavy machinery—all
 17 job responsibilities associated with the construction industry and IWC Wage Order 16. (*See*
 18 *Compl.*, ¶¶ 17-19.)

19 18. An artfully pled state law claim is properly “recharacterized” as a federal claim
 20 under the “complete preemption” doctrine, which provides that the preemptive force of Section
 21 301 “converts an ordinary state law complaint into one stating a federal claim for purposes of the
 22 well-pleaded complaint rule” and is removable to federal court. *Caterpillar Inc. v. Williams*, 482
 23 U.S. 386, 393 (1987); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 23
 24 (1983) (“[I]f a federal cause of action completely preempts a state cause of action, any complaint
 25 that comes within the scope of the federal cause of action necessarily ‘arises’ under federal law.”).

2. Resolution of Plaintiff's Claims Involves Rights that Exist Solely Due the CBA or Will Require Substantial Interpretation of Various Provisions of the CBA.

19. The artfully pled claims asserted in the Complaint are, in actuality, “founded directly on rights created by collective bargaining agreements” and/or are substantially dependent on an analysis and interpretation of a collective bargaining agreement. *See Hayden v. Reickerd*, 957 F.2d 1506, 1509 (9th Cir. 1991); *see also Caterpillar Inc.*, 482 U.S. at 394. To analyze Plaintiff’s claims, therefore, the Court will necessarily need to interpret the provisions of the relevant CBA.

20. Plaintiff asserts the following claims: (1) meal period violations (Cal. Labor Code §§ 512, 226.7(c)); (2) rest period violations (*id.*, § 226.7 (c)); (3) failure to pay minimum wage (*id.*, §§ 1194, 1194.2); (4) wage statement violations (*id.*, § 226); (5) waiting time penalties (*id.*, §§ 201-203); (6) violation of unfair competition laws (Cal. Bus. & Prof. Code § 17200 et seq.); (7) Private Attorneys General Act (Cal. Labor Code § 2698 et seq.); and (8) wrongful termination due to retaliation (Cal. Labor Code § 1102.5).

21. The operative CBA sets forth specific language governing meal periods (Ow Dec., Ex. 1, p. 42, §§ 06.19.00 - 06.19.05 – “Meal Period” & “Second (2nd) Meal Period”), rest periods (*id.*, p. 44, §§ 06.27.00 – 06.27.04 – “Rest Periods”); minimum wage for various classifications of employee in various geographies (*id.*, pp. 1-26, § 01.01.00; p. 126, “Letter of Understanding – Waiver of Local Minimum Wage Ordinances”), working hours (*e.g.*, *id.*, pp. 43-44, §§ 06.25.00 - 06.25.02 (overtime), p. 38, § 06.00.00 (work days and hours)), wage statements and timely payment of wages, including prescribing penalties for violations of such provisions (*id.*, p. 53, §§ 10.02.00 - 10.02.01 – “Payment of Wages”), and the availability of claims under PAGA (*id.*, p. 27, “Side Letter Agreement – Waiver of Private Attorneys General Act of 2004 (PAGA)”). The CBA also provides for a grievance process and requires binding arbitration to resolve any disputes arising under the CBA, including any allegation of a violation of IWC Wage Order 16 (the applicable IWC Wage Order). (*Id.*, pp. 75-79, §§ 18.00.00 – 18.06.00 – “Grievance Procedure”). Resolution of Plaintiff’s claims will require the Court to interpret, at a minimum, all of these

1 provisions: Plaintiff did not grieve any of the claims in his lawsuit pursuant the grievance and
2 arbitration procedures set forth in the CBA. (Ow Dec., ¶ 9.)

3 22. **Meal Periods.** Plaintiff’s meal period claim is premised on the theory that
4 Graniterock required him to carry communication devices, respond to calls on those devices, and
5 work through his meal periods, and that it further failed to provide premiums for meal periods that
6 it failed to purportedly provide. (Compl. ¶¶ 14-15, 20.) While styled as a state law claim, the
7 claim in fact arises solely out of the operative CBA, because the relevant Labor Code section (§
8 512) by its own terms exempts employees from its application who are subject to a valid collective
9 bargaining agreement. California Labor Code § 512 provides the default state law rule for meal
10 periods. However, § 512(e) and (f) explicitly state that the default rule is inapplicable to
11 employees in the construction occupation (which includes excavation and any other similar related
12 occupations or trades (§512(g))) where the employee is covered by a valid collective bargaining
13 agreement and the collective bargaining agreement expressly provides for the wages, hours of
14 work, and working conditions of employees, and expressly provides for meal periods for those
15 employees, final and binding arbitration of disputes concerning application of its meal period
16 provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of
17 not less than 30 percent more than the state minimum wage rate.

18 23. Plaintiff is subject to the CBA, which meets all the elements to qualify for the
19 exemption. Specifically, the CBA expressly provides for meal periods and contains a detailed
20 grievance and arbitration process, which is final and binding, concerning disputes relating to the
21 provision of meal periods. (Ow Dec., Ex. 1, p. 42, §§ 06.19.00 - 06.19.05 (meal period provisions,
22 including application of grievance and arbitration procedure regarding disputes concerning meal
23 periods); *see also* §§ 18.00.00 – 18.06.00 (grievance and arbitration procedures).) The CBA also
24 provides for overtime premiums (*id.*, Ex. 1, pp. 43-44, §§ 06.25.00 - 06.25.02), and Plaintiff, along
25 with other employees covered by the CBA, received an hourly rate of pay of 30% more than the
26 state minimum wage during all relevant periods (*id.*, Ex. 1, pp. 2-26, , § 01.03.00).

27 24. Accordingly, Plaintiff’s meal period claim exists “solely as a result of the CBA.”
28 *Sykes v. F.D. Thomas, Inc.*, No. 20-CV-03616-VC, 2021 WL 343960, at *2 (N.D. Cal. Feb. 2,

2021) (“The meal period claim is also preempted at step one. Section 512(e) exempts employees in a construction occupation from the meal period requirements of 512(a) if they are covered by a CBA that meets certain requirements.”); *see also Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1032 (9th Cir. 2016) (quoting *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007)). Further, any determination of whether Plaintiff was required to carry communication devices and the extent to which he was required to answer or respond to calls on those devices, as Plaintiff has alleged to support his meal period claim, will also invariably require interpretation of the CBA’s meal period and working rules (Ow Dec., Ex. 1, p. 38-39, §06.00.00) provisions, among others, as to the degree of control Graniterock was permitted to exercise under the CBA without violating the CBA’s meal period entitlements. Further, the CBA explicitly provides that “[a]ll disputes concerning meal[] . . . periods are subject to the Grievance Procedures provided for in [the CBA].” (Ow Dec., Ex. 1, p. 42, § 06.19.05.)

25. **Rest Periods.** Plaintiff’s rest period claim is premised on the theory that Graniterock allegedly required him to carry communication devices, respond to calls on those devices, and work through his rest periods, and that it further failed to provide premiums for rest periods that it failed to purportedly provide. (Compl. ¶¶ 14-15, 20.) While styled as a state law claim, the claim in fact arises solely out of the operative CBA, because IWC Wage Order 16 by its own terms exempts employees from its application who are subject to a valid CBA providing equivalent protection. Section 11 of IWC Wage Order 16 provides the default state rule for rest periods. *See* Cal. Labor Code §§ 516(a) (authorizing the IWC to adopt an order providing for rest periods), 226.7 (requiring employers to comply with rest period rule established by the IWC). Section 11(E), however, provides that “[t]his section shall not apply to any employee covered by a valid collective bargaining agreement if the collective bargaining agreement provides *equivalent protection*.” 8 Cal. Code Regs. § 11060(11)(E) (emphasis added). Section 11(D) further provides that “[i]n cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.”

26. Here, the CBA provides equivalent protection,³ thus, extinguishing Plaintiff's state law claim and premising his claim entirely upon the CBA. Section 06.27.00 explicitly provides for ten-minute rest breaks for every four hours worked (Ow Dec., Ex. 1, p. 44, § 06.27.00), provides that any failure to provide such rest breaks will subject the employer to a penalty of one hour at the employee's applicable wage rate (*id.* § 06.27.03), and indicates that rest periods will be considered hours worked and paid at the employee's regular rate (*id.*, §§ 06.01.00, 06.03.00). Thus, Plaintiff's rest period claim exists "solely as a result of the CBA." *Kobold*, 832 F.3d at 1059; *Zayerz v. Kiewit Infrastructure West*, 2018 WL 582318, *5 ("Plaintiff was covered, then, by a valid CBA that offered equivalent protection as that found Wage Order No. 16. Accordingly, Plaintiff's rest period claims are exempted by Wage Order No. 16 and [therefore preempted]."). Any determination of whether Plaintiff was required to carry communication devices and the extent to which he was required to answer or respond to calls on those devices, as Plaintiff has alleged in support of his rest period claim, will also invariably require interpretation of the CBA's rest period and working rules (Ow Dec., Ex. 1, p. 38-39, §06.00.00) provisions, among others, as to the degree of control Graniterock was permitted to exercise under the CBA without violating the CBA's rest period entitlements. Further, the CBA explicitly provides that "[a]ll disputes

³ The protections the IWC Wage Order provides are as follows:

- (A) "[R]est period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof" and that if an employer fails to provide any such rest period, it "shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." § 11(A), (D). 8 Cal. Code Regs. § 11060(11)(A).
- (B) "Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period." *Id.* at § 11060(11)(B).
- (C) "A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages." *Id.* at § 11060(11)(C).
- (D) "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. *Id.* at § 11060(11)(D).

1 concerning . . . rest periods are subject to the Grievance Procedures provided for in [the CBA].”
2 (Ow Dec., Ex. 1, p. 44, § 06.27.04.)

3 27. **Failure to Pay Minimum Wage (for All Hours Worked).** The CBA sets forth
4 the parties’ mutual, detailed agreement regarding all issues pertaining to employee hours and
5 wages, including but not limited to minimum wages, overtime wages, meal and rest periods, days
6 of work, days of rest, daily shifts for various classifications of workers, reckoning of time,
7 reporting time, recovery periods, etc. (*E.g.*, Ow Dec., Ex. 1, pp. 1-26, § 01.01.00 (wages), pp. 43-
8 44, §§ 06.25.00 - 06.25.02 (overtime), p. 38, § 06.00.00 (work days and hours).)

9 28. Plaintiff’s minimum wage claim is, in large part, a reformulation of his meal and
10 rest period claims which are encompassed by and arise out of the CBA and which he was required
11 to grieve under the procedures outlined in the CBA. Specifically, Plaintiff claims that he was
12 deprived of a minimum wage because he was not provided duty-free meal and rest periods.
13 (Compl. ¶ 20.) Because the claim is, in part, derivative of his meal and rest period claims,
14 Plaintiff’s minimum wage claim likewise arises out of the CBA and is preempted by Section 301
15 of the LMRA.

16 29. Plaintiff also claims that he (and other aggrieved employees) were required to pass
17 through security checkpoints, attend safety meetings, and prepare heavy machinery for the day,
18 which was all purportedly uncompensated. (Compl. ¶ 18.) Even resolution of these claims is
19 inextricably intertwined with the CBA and requires its interpretation. The CBA prescribes
20 different minimum wage rates for different classification of workers in different geographies. (Ow
21 Dec., Ex. 1, pp. 1-26, § 01.01.00.) The CBA further provides the scope of duties each
22 classification is responsible for performing, whether alone or in concert with other workers, and
23 the specific shifts (both days and hours) each classification of worker may be permitted to work.
24 (*E.g.*, *id.*, pp. 38-45, § 06.00.00 (working rules). For instance, relevant to Plaintiff’s allegations,
25 the CBA prescribes procedures for assignment of work where pre-shift or post-shift work is
26 necessitated. (*Id.*, p. 42, § 06.14.01.) It stipulates that “[t]he recognized established practice
27 regarding the starting and warming up of equipment by Employees under this Agreement shall not
28 be changed.” (*Id.*, p. 42, § 06.16.00.) It also outlines the procedures from traveling from one

1 work location to another work location, including wage rates that may be applicable, if any. (*Id.*,
2 p. 52, § 08.02.02.) And it further discusses the compensability of possible travel time when an
3 employee's access to the worksite is impeded. (*Id.*, p. 52, § 08.02.02.) To resolve Plaintiff's
4 claims, the Court would necessarily need to interpret the CBA to determine Plaintiff's correct
5 classification and minimum wage rates pursuant to the schedule of wages within the CBA,
6 whether the purportedly uncompensated activities cited by Plaintiff constituted compensable
7 activity under the CBA for pre-shift or post-work activities. For instance, the Court will need to
8 interpret whether passing through security checkpoints is de minimis such that § 08.02.02 holds
9 that it is not compensable or considered "hours worked"; it will also need to interpret the
10 applicable wage rates, given that any transportation to the worksite due to its inaccessibility may
11 be compensated at different rates than the regular straight time rate for the employee. Similar
12 interpretation would apply with respect to the preparation of heavy equipment, which the CBA
13 provides must be done pursuant to established practice; the Court will need to evaluate these
14 practices to determine whether such work is compensable time under the CBA and, if so, at what
15 rates. *See United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580–81, 80
16 (1960) (labor contract includes both express and implied terms, such as established practices and
17 policies adopted pursuant to the agreement).

18 30. Resolution of Plaintiff's minimum wage claim also will require substantial
19 interpretation of the CBA's provisions pertaining to overtime. (Ow Dec., ¶ 9.) Thus, the Court
20 would be ensnared into interpreting the CBA's overtime provisions, which are rights granted
21 solely under the CBA. California Labor Code section 514 provides that the Labor Code's
22 overtime provisions do not apply to employees covered by a valid collective bargaining agreement
23 which "provides for the wages, hours of work, and working conditions of the employees, . . .
24 premium wage rates for all overtime hours worked and a regular hourly rate of pay for those
25 employees of not less than 30 percent more than the state minimum wage." As the CBA satisfies
26 these elements, any such latent overtime issues will require preemption of the minimum wage
27 claim.

28

1 31. **Derivative Claims.** Plaintiff also asserts claims for waiting time penalties for
 2 failure to pay all wages earned at termination, wage statement violations, unfair competition, and
 3 violation of PAGA. Each of these claims is derivative of Plaintiff's meal and rest period and
 4 minimum wage claims (*see* Compl., ¶¶ 22 (wage statement claim derivative), 23 (waiting time
 5 penalties derivative), 24 (unfair competition claim derivative), 65-68 (PAGA claim derivative),
 6 and, therefore, they are likewise preempted. *See e.g. Fitz-Gerald v. SkyWest, Inc.*, 155 Cal. App.
 7 4th 411, 422 (2007) (preemption analysis applies to derivative claims); *Blackwell v. SkyWest*
 8 *Airlines, Inc.*, No. 06-307 DMS (AJB), 2008 WL 5103195 (S.D. Cal. Dec. 3, 2008) (same).

9 32. Plaintiff's wage statement claim also alleges Graniterock failed to accurately
 10 identify the name of his employer on its wage statements in violation of Labor Code section
 11 226(a)(8) (Compl., ¶ 46), an allegation that is not derivative of Plaintiff's meal and rest period and
 12 minimum wage claims. Graniterock's wage statement identified the employer as "Graniterock
 13 positioned atop the company's logo; the company's name registered with the California Secretary
 14 of State is in fact, "Granite Rock Company." (Ow Dec., ¶ 3.) However, state law does not require
 15 its registered name be listed on wage statements or prohibit an employer from truncating its
 16 registered name. *See Mejia v. Farmland Mutual Insurance Co.*, 2018 WL 3198006 (E.D. Cal.
 17 2018) (holding that defendant's use of "Farmland Mutual Insurance Co." on wage statements
 18 rather than the registered name "Farmland Mutual Insurance Company" was not a violation of §
 19 226(a)(8), stating "instead of requiring an employer to state its 'complete' or 'registered' name,
 20 section 226(a)(8) only requires the employer to state its 'name and address.'"); *Savea v. YRC Inc.*,
 21 34 Cal. App. 5th 173, 180 (2019) (agreeing with *Mejia*). Thus, the Court would need to interpret
 22 the CBA, which contains its own requirements for its employee wage statements, to determine
 23 whether the Union and Graniterock intended to impose such additional requirement not found in
 24 state law. Specifically, section 10.02.00 of the CBA provides that the employer must accompany
 25 each payment of wages with a "separate statement *identifying* the Individual Employer, and
 26 showing the total earnings, the amount of each deduction, the purpose thereof and net earnings."
 27 (Ow Dec., Ex. 1, p. 53, § 10.02.00 (emphasis added).) Because interpretation of the CBA is
 28 required to determine to resolve the dispute of whether the parties intended "identifying" to

1 encompass the level of exactitude Plaintiff contends is necessary, this nonderivative allegation
 2 does not salvage the wage statement claim from preemption.

3 33. **PAGA Claim.** Besides being derivative of his other Labor Code claims, Plaintiff's
 4 PAGA claim is independently preempted because it also arises solely out of the operative CBA.
 5 Labor Code section 2699.6 explicitly provides that PAGA

6 *shall not apply* to an employee in the construction industry with respect to work
 7 performed under a valid collective bargaining . . . that expressly provides for the
 8 wages, hours of work, and working conditions of employees, premium wage rates
 9 for all overtime hours worked, and for the employee to receive a regular hourly
 pay rate of not less than 30 percent more than the state minimum wage rate, and
 the agreement does all of the following:.

10 (1) Prohibits all of the violations of this code that would be redressable
 pursuant to this part, and provides for a grievance and binding arbitration
 procedure to redress those violations.

11 (2) Expressly waives the requirements of this part in clear and
 12 unambiguous terms.

13 (3) Authorizes the arbitrator to award any and all remedies otherwise
 available under this code, provided that nothing in this section authorizes the
 14 award of penalties under this part that would be payable to the Labor and
 Workforce Development Agency.

15 (Emphasis added.)

16 34. Here, Plaintiff was employed in the construction industry and under a valid
 17 collective bargaining agreement. Further the CBA expressly provided for wages, hours of work,
 18 and working conditions of employees, premium wage rates for all overtime hours worked, and for
 19 the employee to receive a regular hourly pay rate of not less than 30 percent more than the state
 20 minimum wage rate. (Ow Dec., ¶¶ 7, 9 Ex. 1, pp. 1-26, § 01.00.00; pp. 38-45, § 06.00.00.) The
 21 CBA "prohibits any and all violations of the sections of the California Labor Code and would be
 22 redressable pursuant to [PAGA]" and provides for a grievance and arbitration process to
 23 "exclusively" redress such violations. (*Id.*, Ex. 1, p. 127.) The CBA further "expressly waives the
 24 requirements of PAGA and authorizes the permanent arbitrator to award any and all remedies
 25 otherwise available under the California Labor Code except the award of penalties under PAGA . .
 26 ." (*Id.*)

27 35. Despite the foregoing, Plaintiff has brought a PAGA claim in state court, indicating
 28 he may dispute its applicability or enforceability. Thus, not only does Plaintiff's PAGA claim

1 arise entirely out of the CBA (not state law, from which the parties are exempt), but resolution of
 2 Plaintiff's PAGA claim will necessitate interpretation of the PAGA waiver contained in the
 3 applicable CBA to resolve whether it applies to his claims and is enforceable.

4 36. **Grievance and Arbitration Procedure.** Additionally, applying the CBAs in
 5 conjunction with Labor Code Section 514 and Wage Order No. 16, with the exception of certain
 6 inapplicable claims, the grievance and arbitration procedure set forth in the CBA covers "all . . .
 7 disputes, complaints and grievances concerning the interpretation, application, or compliance with
 8 any provision or provisions of this Agreement." (Ow Dec., Ex. 1, p. 75, § 18.02.00.) Further,
 9 Plaintiff's claims for wages must be arbitrated as the CBA requires arbitration of claims as the
 10 exclusive remedy for any violations of IWC Wage Order 16 (whether addressed in the CBA or
 11 not), all California Labor Code sections enumerated in Labor Code section 2699.5 (which includes
 12 all the Labor Code sections referenced in Plaintiff's Complaint), PAGA, and federal, state and
 13 local laws concerning wage and hour requirements, wage payment, and meal and rest periods:

14 In addition to Contractual Disputes that may be brought by the Union as described
 15 above, all employee disputes concerning violations of, or arising under Wage
 16 Order 16 (except as noted in the immediately preceding paragraph), the California
 17 Labor Code Sections identified in California Labor Code Section 2699.5 as
 18 amended, the California Private Attorneys General Act (Labor Code Section
 19 2698, et. seq.), and federal, state and local law concerning wage-hour
 requirements, wage payment and meal or rest periods, including claims arising
 under the Fair Labor Standards Act (hereinafter "Statutory Dispute" or "Statutory
 Disputes") shall be subject to and must be processed by the employee pursuant to
 the procedures set forth in Section 18.06.00 *as the sole and exclusive remedy*.

20 (*Id.*, p. 78, §§ 18.05.00 (emphasis added).)

21 37. The promotion of extra-judicial dispute resolution is another purpose of Section
 22 301 preemption. State court lawsuits properly removed on preemption grounds may then be
 23 deferred to arbitration, if the parties to the CBA have so agreed. *See Livadas v. Bradshaw*, 512
 24 U.S. 107, 142, fn. 18 (1994). Here, the parties have so agreed, and the claims are therefore subject
 25 to arbitration as discussed above. Accordingly, any alleged violation of the CBA, or of the
 26 applicable IWC Wage Order, is subject to the grievance and arbitration procedures set forth
 27 therein. As nearly all of Plaintiff's claims are in essence alleged violations of the relevant CBA
 28 (and/or of Wage Order 16 and/or the covered Labor Code provisions), the Court will necessarily

1 have to interpret the grievance and arbitration provisions to analyze Plaintiff's claims in this case.
2 That is, the Court will be required to determine whether Plaintiff were first required to exhaust the
3 grievance procedures, whether they did in fact exhaust those procedures, and whether they agreed
4 to arbitrate all or some of their claims—which are all questions reserved for federal courts under
5 the LMRA.

6 38. Accordingly, Plaintiff's wage and hour claims arise out of or are substantially
7 dependent upon the interpretation of the CBA's terms and provisions. In fact, those terms and
8 provisions govern nearly all of the conduct which forms the basis for Plaintiff's Complaint, and
9 thus are essential to the resolution of Plaintiff's wage and hour claims. Accordingly, each of
10 Plaintiff's wage and hour claims arises under Section 301, and is therefore preempted by federal
11 law. Removal to federal court is warranted.

12 IV.

13 SUPPLEMENTAL JURISDICTION

14 39. The Court has supplemental jurisdiction over Plaintiff's remaining state law claim
15 of wrongful termination as well as to the extent that the Court determines any other claims are not
16 completely preempted by Section 301 or are not so inextricably intertwined with or dependent on
17 an interpretation of the CBA, because they relate to and emanate from the same employment
18 relationship between Plaintiff and Graniterock that is the subject of the federal question claims.
19 All the pleaded claims thus emanate from and form part of the same "case or controversy," such
20 that they should all be tried in one action. *See Nishimoto v. Federman-Backrach & Assoc.*, 903
21 F.2d 709, 714 (9th Cir. 1990). Considerations of convenience, judicial economy, and fairness to
22 the litigants strongly favor this Court exercising jurisdiction over all claims in the Complaint. *See*
23 *Executive Software v. U.S. Dist. Court*, 24 F.3d 1545, 1557 (9th Cir. 1994). Accordingly, by
24 virtue of 28 U.S.C. § 1441, Defendant is entitled to remove all of Plaintiff's claims to this Court.

25 V.

26 JOINDER

27 40. Defendant is not aware of any other defendant that exists and who has been named
28 in the Complaint or who has been served with a summons and the Complaint. *See Exhibit A.*

VI.

NOTICE TO PLAINTIFF AND STATE COURT

41. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of such filing will be served on Plaintiff's counsel of record, at Manny Starr, Karo G. Karapetyan and Joseph A. Gross, Frontier Law Center, 23901 Calabasas Road, #2074, Calabasas, California 91302. In addition, a copy of this Notice of Removal will be filed with the Clerk of the Court for the Superior Court of the County of Santa Clara, California.

42. In compliance with 28 U.S.C. § 1446(a), true and correct copies of all "process, pleadings, and orders" from the state court action served on Defendant or filed by Defendant are attached hereto as **Exhibits A, B, C, D, E, and F**.

WHEREFORE, having provided notice as is required by law, the above-entitled action should be removed from the Superior Court for the County of Santa Clara to this Court.

Dated: December 8, 2021

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

/s/ Luis Arias

By

PAUL S. COWIE
BRIAN S. FONG
SAMI HASAN
LUIS F. ARIAS
Attorneys For Defendant
GRANITE ROCK COMPANY

EXHIBIT A

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

GRANITE ROCK COMPANY, a California Corporation; and DOES 1 to 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ARNOLD JAQUEZ, an individual, and all Aggrieved Employees

E-FILED
8/19/2021 11:25 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV387540
Reviewed By: R. Tien
Envelope: 7096325

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara County Superior Court, Downtown Superior Court
191 North First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso):

21CV387540

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Frontier Law Center, 23901 Calabasas Road, Suite #2074, Calabasas, CA, 91302, (818) 914-3433

DATE: 8/19/2021 11:25 AM Clerk of Court Clerk, by R. Tien, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

E-FILED
 8/19/2021 11:25 AM
 Clerk of Court
 Superior Court of CA,
 County of Santa Clara
 21CV387540
 Reviewed By: R. Tien

Karo G. Karapetyan (318101)
Karo@frontierlawcenter.com
 Joseph A. Gross (332258)
Joseph@frontierlawcenter.com
 Frontier Law Center
 23901 Calabasas Road, #2074
 Calabasas, CA 91302
 Telephone: (818) 914-3433
 Facsimile: (818) 914-3433

Attorneys for Plaintiff
 Arnold Jaquez and all Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA CLARA

ARNOLD JAQUEZ, an individual, and all
 Aggrieved Employees

Plaintiff,

v.

GRANITE ROCK COMPANY, a California
 Corporation; and DOES 1 to 100, inclusive,

Defendants.

) NO. 21CV387540

) COMPLAINT

-) 1. Meal Period Violation
) 2. Rest Period Violation
) 3. Failure to Pay Minimum Wage
) 4. Wage Statement Penalties
) 5. Waiting Time Penalties
) 6. Violation of Unfair Competition Law
) 7. Private Attorneys General Act
) 8. Wrongful Termination

PRELIMINARY ALLEGATIONS

1. Plaintiff ARNOLD JAQUEZ ("Plaintiff") is a resident of Santa Cruz County, in California.
2. Defendant GRANITE ROCK COMPANY ("GRC" or "Defendant") is a California Corporation, doing business in Santa Clara County.
3. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.
4. GRC, all named, and unnamed Doe defendants are collectively referred to as "Defendants."
5. Plaintiff is informed and believes that each of the Defendants was the agent or employee of the other Defendants and acted in the scope of agency or employment.

6. On June 4, 2021, Plaintiff sent a PAGA letter via certified mail to Defendants and uploaded the letter to the Labor and Workforce Development Agency (“LWDA”) website (LWDA Case No. LWDA-CM-834137-21).

7. The 65-day PAGA notice period has elapsed, and the LWDA has not responded.

8. Pursuant to Labor Code §§2698, et. seq., Plaintiff seeks to represent all other nonexempt employees employed by Defendants in California during the PAGA Period. (“Aggrieved Employees”)

9. The PAGA Period is defined as June 4, 2020, through the date of settlement approval or judgment.

FACTUAL ALLEGATIONS

10. Defendants employed Plaintiff as a Field Supervisor from October 2016 to November 2, 2020.

11. Industrial Welfare Commission Wage Order 4-2001 (“Wage Order 7”) applies because Defendants employed Plaintiff in a professional, technical, or clerical capacity.

12. Plaintiff was paid on an hourly basis and is therefore non-exempt from Wage Order 4.

13. Plaintiff and the Aggrieved Employees were often denied compliant meal and rest periods, in violation of Labor Code §226.7.

14. Plaintiff and the Aggrieved Employees were required to carry communication devices, and respond to calls on those devices, while on their purported meal or rest breaks.

15. Despite their failure to provide Plaintiff and the Aggrieved Employees with compliant meal and rest periods, Defendants failed to provide Plaintiff and the Aggrieved Employees with “premium pay” for those missed meal and rest periods, in violation of Labor Code §226.7.

16. As a result of Defendants’ violations of Labor Code §226.7 Plaintiff, and the Aggrieved Employees who are no longer employed by Defendants, were not paid all wages due and owing at the time their employment with Defendants ended, and thus are entitled to waiting time penalties, as set forth in Labor Code §§201 – 203.

17. Plaintiff and the Aggrieved Employees were required to prepare for the start of their shifts

1 prior to clocking in.

2 18. Prior to clocking in, Plaintiff and the Aggrieved Employees were required to pass through
3 security checkpoints, attend safety meetings, and prepare heavy machinery for the day.

4 19. Defendants specifically instructed Plaintiff and the Aggrieved Employees not to mark their
5 timecards for time spent passing through security checkpoints, attending safety meetings, and
6 preparing heavy machinery.

7 20. Notwithstanding the fact that Plaintiff and the Aggrieved Employees did not receive duty-
8 free meal and rest periods, Defendants instructed Plaintiff and the Aggrieved Employees to clock-
9 out during their purported meal periods, while continuing to work.

10 21. Therefore, Defendants violated Labor Code §1194 by failing to compensate Plaintiff and
11 the Aggrieved Employees with minimum wage for all hours worked.

12 22. As a result of Defendants' violation of Labor Code §§226.7 and 1194, Defendants failed to
13 provide Plaintiff and the Aggrieved Employees with wage statements that complied with Labor
14 Code §226.

15 23. As a result of Defendants' violation of Labor Code §§226.7 and 1194, Defendants failed to
16 provide Plaintiff and the Aggrieved Employees with all wages due and owing at the time of
17 termination, or within seventy-two (72) hours of resignation.

18 24. Defendants have profited by virtue of their non-compliance with the Labor Code; rather
19 than pay Plaintiff and the Aggrieved Employees minimum wage, overtime, and premium pay,
20 Defendants are free to treat those illegally withheld funds as profits, whereas businesses that
21 comply with the Labor Code cannot.

22 25. On November 2, 2020, Defendant terminated Plaintiff's employment.

23 26. Shortly before Plaintiff's termination, Plaintiff informed his supervisor that one of
24 Defendants' employees engaged in sexual harassment in violation of the Fair Employment and
25 Housing Act ("FEHA").

26 27. Plaintiff's employment was terminated in retaliation for disclosing to Defendant that
27 Defendants' employee engaged in sexual harassment in violation of FEHA.

28 ///

FIRST CAUSE OF ACTION

Meal Period Violation

(By Plaintiff Against All Defendants)

28. Plaintiff incorporates by reference the paragraphs above.

29. Wage Order 4 and Labor Code section 512 require employers to provide its employees with compliant meal periods.

30. These provisions also provide that an employer may not employ any person for a work period of more than five hours per day without a meal period of not less than 30 minutes.

31. Plaintiff was not provided with compliant meal and rest breaks as set forth above and incorporated by reference herein.

32. As a result, Defendants are required to remit premium pay pursuant to Labor Code section 226.7(c) for each missed break, which is one additional hour of pay at their regular rate of compensation for each day that a meal period was not allowed.

SECOND CAUSE OF ACTION

Rest Period Violation

(By Plaintiff Against All Defendants)

33. Plaintiff incorporates by reference the paragraphs above.

34. Pursuant to Section 12 of Wage Order 4 every employer shall authorize and permit employees to take rest periods of ten minutes for every four hours, or major fraction thereof, worked.

35. Pursuant to Labor Code section 226.7(c) and subpart (D) of paragraph 12 of Wage Order 4, if an employer fails to provide an employee with the required rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that a rest period is not provided.

36. Defendants violated Labor Code section 226.7(c) and Wage Order 4 when they failed to provide Plaintiff with duty free rest periods, as more fully set forth above, and incorporated herein by reference.

37. As a result, Defendants are required to remit premium pay pursuant to Labor Code section

226.7(c) for each missed break, which is one additional hour of pay at their regular rate of compensation for each day that a meal period was not allowed.

THIRD CAUSE OF ACTION

Failure to Pay Minimum Wage

(By Plaintiff Against All Defendants)

38. Plaintiff incorporates by reference the paragraphs above.

39. Pursuant to Labor Code section 1194 an employee who receives less than the legal minimum wage for all hours worked is entitled to recover the full amount of this minimum wage compensation in a civil suit.

40. Plaintiff was not compensated for his off-the-clock work, as set forth above.

41. It follows that Defendants failed to provide Plaintiff with minimum wage for all hours worked.

42. Plaintiff is entitled to recover the full amount of that minimum wage compensation in this civil suit.

43. Pursuant to Labor Code section 1194, Plaintiff is further entitled to recover interest, fees, and costs.

44. Pursuant to Labor Code section 1194.2, Plaintiff is entitled to recover double the unpaid minimum wage as liquidated damages.

FOURTH CAUSE OF ACTION

Wage Statement Penalties

(By Plaintiff Against All Defendants)

45. Plaintiff incorporates by reference the paragraphs above.

46. Defendants failed to provide Plaintiff with compliant wage statements since the wage statements issued did not accurately list the total hours worked, number of hours worked at each hourly rate, wages earned, or the legal name of the employer, among other things.

47. Therefore, Plaintiff suffered an injury pursuant to Labor Code §§226(2)(B), and (C).

48. On information and belief, Defendants were advised by skilled lawyers and knew of the requirements of the California Labor Code, but intentionally and willfully failed to comply.

49. As a result of these knowing and intentional violations, Labor Code section 226(e) requires Defendants to pay to the greater of all actual damages or \$50.00 for the initial pay period per employee in which the violation occurred, and \$100.00 for each subsequent violation, plus attorneys' fees and costs.

FIFTH CAUSE OF ACTION

Waiting Time Penalties

(By Plaintiff Against All Defendants)

50. Plaintiff incorporates by reference the paragraphs above.

51. Defendants terminated Plaintiff's employment on or about November 2, 2020.

52. Defendants failed to provide Plaintiff, with "premium pay" for non-compliant meal and rest periods during their employment.

53. Defendants failed to compensate Plaintiff for all hours worked.

54. It follows that Defendants further failed to pay Plaintiff these wages earned at the conclusion of his employment.

55. As such, Defendants failed to pay Plaintiff all wages due and payable at the time of termination, or the waiting time penalties thereon, as required by Labor Code §§ 201-203.

56. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by the Plaintiff, and the Aggrieved Employees who are no longer employed by Defendants, in a civil action, for the unpaid balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, and 1194.

SIXTH CAUSE OF ACTION

Violation of Unfair Competition Law

(By Plaintiff Against All Defendants)

57. Plaintiff incorporates by reference the paragraphs above.

58. Defendants' conduct described above constituted unfair competition.

59. Specifically, Defendants have gained an unfair advantage over other similarly situated businesses by unlawfully reducing their overhead costs by not paying their employees what they

are owed.

60. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all wrongfully withheld wages.

61. Plaintiff may recover attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(By Plaintiff and the Aggrieved Employees Against All Defendants)

62. Plaintiff and the Aggrieved Employees re-allege and incorporate by reference each and every allegation contained in the paragraphs above and, to the extent necessary, plead this cause of action in the alternative.

63. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code section 2699.

64. As alleged herein, Defendants' conduct violates numerous sections of the California Labor.

65. With respect to violations of Labor Code sections 226.7 and 512(a) for Defendants' failure to provide Plaintiff and the Aggrieved Employees with meal and rest periods or compensation in lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

66. With respect to violations of Labor Code section 1194, for failure to pay minimum wage for all hours worked, the penalties in Labor Code sections 558 and 1197.1 apply.

67. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code section 226.3 apply.

68. With respect to violations of Labor Code sections 201, and 202, for failure to timely pay all wages to Plaintiff and the Aggrieved Employees upon the conclusion of employment, the penalties in Labor Code section 210 apply.

69. Additionally, Plaintiff and the Aggrieved Employees are entitled to reasonable attorney's fees and costs pursuant to Labor Code section 2699(g).

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///

EIGHTH CAUSE OF ACTION

WRONGFUL TERMINATION

(By Plaintiff Against All Defendants)

70. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

71. Labor Code section 1102.5(b) states, in relevant part, “An employer [...] shall not retaliate against an employee for disclosing information [...] to a person with authority over the employee [...] if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute.”

72. Here, Plaintiff disclosed information to his supervisor relating to one of Defendant’s employees engaging in conduct which violated FEHA.

73. Shortly after Plaintiff disclosed this information, Plaintiff was terminated in violation of Labor Code section 1102.5.

74. As a proximate result of Defendant’s wrongful termination of Plaintiff, Plaintiff has suffered and continues to suffer damages, which includes, but is not limited to: severe emotional distress, lost wages, benefits, and compensation, and loss of future earnings and earning capacity.

75. Further, because the wrongful acts against Plaintiff were carried out, authorized, or ratified by Defendant’s directors, officers, and/or managing agents, acting with malice, oppression, or fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, Plaintiff seeks punitive damages to deter Defendant from committing said illegal acts in the future.

PRAYER

First Cause of Action

1. Premium pay; and
4. Other relief the court deems proper.

Second Cause of Action

1. Premium pay; and
4. Other relief the court deems proper.

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Third Cause of Action

1. Unpaid wages;
2. Interest;
3. Liquidated damages;
4. Attorneys' fees;
5. Costs; and
6. Other relief the court deems proper.

Fourth Cause of Action

1. Wage statement penalty;
2. Attorney fees and costs; and
3. Other relief the court deems proper.

Fifth Cause of Action

1. Waiting time penalty;
2. Attorney fees and costs; and
2. Other relief the court deems proper.

Sixth Cause of Action

1. Restitution of unpaid wages and premium pay;
2. Attorney fees and costs; and
3. Other relief the court deems proper.

Seventh Cause of Action

1. For penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699.
2. Attorney's fees and costs; and
3. Other relief the court deems proper

1 Eighth Cause of Action

- 2 1. Future Earnings;
3 2. Lost Wages;
4 3. Interest;
5 4. Attorneys' fees;
6 5. Costs; and
7 6. Other relief the court deems proper.
8

9 Date: August 13, 2021

FRONTIER LAW CENTER

10
11 /s/ Karo Karapetyan
12 Karo Karapetyan
13 Attorney for Plaintiff
14 Arnold Jaquez

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff Arnold Jaquez hereby demands a trial by jury.
17

18 Date: August 13, 2021

FRONTIER LAW CENTER

19
20 /s/ Karo Karapetyan
21 Karo Karapetyan
22 Attorney for Plaintiff
23 Arnold Jaquez
24
25
26
27
28

EXHIBIT B

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
PAUL S. COWIE, Cal. Bar No. 250131
3 BRIAN S. FONG, Cal. Bar No. 262846
SAMI HASAN, Cal. Bar No. 272333
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Four Embarcadero Center, 17th Floor
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9 Attorneys for Defendant GRANITE ROCK
COMPANY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 ARNOLD JAQUEZ, an individual and all
Aggrieved Employees,

14 Plaintiff,

15 v.

16 GRANITE ROCK COMPANY, a California
17 corporation; and DOES 1 to 100 inclusive,
Defendant.

Case No. 21CV387540

**DEFENDANT GRANITE ROCK
COMPANY'S ANSWER TO PLAINTIFF
ARNOLD JAQUEZ'S COMPLAINT**

Complaint Filed: August 19, 2021
Trial Date: None Set

1 Defendant GRANITE ROCK COMPANY (“Defendant”) hereby answers the Complaint
2 filed by Plaintiff ARNOLD JAQUEZ (“Plaintiff”) on August 19, 2021, as follows:

3 **GENERAL DENIAL**

4 Pursuant to the provisions of Section 431.30(d) of the California Code of Civil Procedure,
5 Defendant generally and specifically denies each and every allegation in the Complaint and further
6 denies that Plaintiff has been damaged in the amount alleged, or in any other sum, or at all, by
7 reason of any act, omission to act, conduct, or liability on the part of Defendant, or on the part of
8 any of Defendant’s agents, servants, employees, representatives, or any other person for whose
9 acts Defendant is responsible.

10 **AFFIRMATIVE DEFENSES**

11 In further answer to Plaintiff’s Complaint, Defendant alleges the following affirmative
12 defenses. In asserting these defenses, Defendant does not assume the burden of proof as to matters
13 that, pursuant to law, are Plaintiff’s burden to prove.

14 **FIRST AFFIRMATIVE DEFENSE**

15 (Statute of Limitations)

16 1. The Complaint, and each purported cause of action alleged therein, is barred by
17 applicable statutes of limitations, including but not limited to Code of Civil Procedure sections
18 338, 340, and Labor Code sections 2699 *et. seq.*

19 **SECOND AFFIRMATIVE DEFENSE**

20 (Failure to State a Claim)

21 2. The Complaint does not state facts sufficient to permit Plaintiff to proceed on
22 behalf of himself or on behalf of others in a representative capacity under the Private Attorneys
23 General Act, does not plead facts sufficient to state any cause of action under the California Labor
24 Code, and does not state facts sufficient to state any cause of action for wrongful termination.
25
26
27
28

THIRD AFFIRMATIVE DEFENSE

(After Acquired Evidence)

3. Defendant is informed and believes, and based upon such information and belief alleges, Plaintiff is barred, in part or total, from recovery of any damages, based upon the doctrine of after-acquired evidence.

FOURTH AFFIRMATIVE DEFENSE

(Comparative Fault of Plaintiff)

4. Plaintiff's damages, if any, were proximately caused, and contributed to, by Plaintiff's own negligence and/or intentional acts or omissions. Therefore, Plaintiff's recovery, if any, must be reduced in proportion to Plaintiff's own fault in causing the damages for which Plaintiff seeks recovery.

FIFTH AFFIRMATIVE DEFENSE

(Legitimate Reasons for Employment Actions)

5. Plaintiff's wrongful termination and retaliation claims against Defendant are barred because any adverse employment action taken against Plaintiff was made for legitimate non-retaliatory reasons.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

6. Even if Plaintiff suffered damages as a result of the facts alleged in the Complaint—which Defendant denies—Plaintiff failed to take reasonable steps to mitigate, minimize, or prevent the claimed damages. Therefore, any damages actually suffered by Plaintiff must be reduced to the extent Plaintiff reasonably could have avoided or mitigated such damages.

SEVENTH AFFIRMATIVE DEFENSE

(Speculative Damages)

7. Even if the allegations in the Complaint are true—which Defendant denies—Plaintiff is not entitled to recover any damages, because Plaintiff's alleged damages are too speculative.

EIGHTH AFFIRMATIVE DEFENSE

(Setoff, Offset, Recoupment)

8. Certain amounts sought to be recovered in the Complaint are subject to setoff, offset, and/or recoupment, and are therefore barred in whole or in part.

NINTH AFFIRMATIVE DEFENSE

(Failure to State Facts to Support Punitive Damages)

9. The Complaint, and each and every purported cause of action alleged therein, fails to state facts sufficient to sustain the imposition of punitive damages against Defendant pursuant to California Civil Code Section 3294.

TENTH AFFIRMATIVE DEFENSE

(Unconstitutionality of Punitive Damages)

10. An award of punitive damages in this action would violate Defendant's due process and equal protection rights under the United States Constitution and the California Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

(Preemption – Supremacy Clause)

11. Defendant asserts that the Supremacy Clause of the United States Constitution bars Plaintiff's claims. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001).

TWELFTH AFFIRMATIVE DEFENSE

(Field Preemption)

12. Defendant alleges that the Complaint and each cause of action set forth therein, or some of them, cannot be maintained against Defendant because they are preempted by field preemption.

THIRTEENTH AFFIRMATIVE DEFENSE

(LMRA Preemption)

13. The resolution of each cause of action set forth in the Complaint, or some of them, cannot be maintained against Defendant because Plaintiff's state law claims arise out of, require interpretation of, are intertwined with, or infringe on the arbitration process set forth in, a

collective bargaining agreement and are therefore preempted by Section 301 of the Labor Management Relations Act “LMRA” (29 U.S.C. § 185).

FOURTEENTH AFFIRMATIVE DEFENSE

(NLRA Preemption)

14. Defendant alleges that the Complaint and each cause of action set forth therein, or some of them, cannot be maintained against Defendant because Plaintiff’s claims are preempted by the National Labor Relations Act (“NLRA”).

FIFTEENTH AFFIRMATIVE DEFENSE

(*Machinist* Preemption)

15. Defendant alleges that the Complaint and each cause of action set forth therein, or some of them, cannot be maintained against Defendant because Defendant alleges that Plaintiff’s state law claims regulate conduct in an area of labor activity or management-union relations that Congress intended to be unregulated and left to be controlled by the free play of economic forces. Rest periods are a mandatory subject of bargaining under the National Labor Relations Act, 29 U.S.C. §§ 151 et seq., and Plaintiff’s claims would require the Court to enmesh itself in the collective bargaining process. Plaintiff’s claims are therefore preempted by *Machinists and Aerospace Workers v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976).

SIXTEENTH AFFIRMATIVE DEFENSE

(Primary Jurisdiction Doctrine)

16. The Complaint, and each purported cause of action alleged therein, should be abated in the Court’s discretion, and Plaintiff, and each purportedly aggrieved employee, should be forced to pursue his administrative remedies with the California Division of Labor Standards Enforcement or the Labor Workforce Development Agency, which have primary jurisdiction over Plaintiff’s claims.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

17. The Complaint, and each purported cause of action alleged therein, is barred in whole or in part because Plaintiff has not suffered any legally cognizable injury or damages as a

1 result of any actions taken or not taken by Defendant, or either of them, and therefore lacks
2 standing to bring the Complaint or any purported cause of action alleged therein.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 (PAGA - Unauthorized Delegation of Power)

5 18. PAGA, which authorizes employees to file private actions against an employer and
6 recover excessive civil penalties, three-quarters of which are paid to an executive agency of the
7 State of California, constitutes an unlawful delegation of power in violation of the California
8 Constitution.

9 **NINETEENTH AFFIRMATIVE DEFENSE**

10 (PAGA – Failure to Provide Notification or to Identify)

11 19. Defendant alleges that Plaintiff failed to identify or to provide the Labor Workforce
12 Development Agency and/or Defendant proper notification of the claims and/or the “aggrieved
13 employees” on whose behalf he intends to seek penalties, pursuant to the Private Attorneys
14 General Act, Labor Code section 2698 *et seq.* and such claims are thus barred and/or limited by
15 law.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 (PAGA – Lack of Standing)

18 20. Defendant is informed and believes, and based upon such information and belief
19 alleges, that Plaintiff lacks standing to assert the Complaint or any purported cause of action
20 alleged therein; or to bring claims for any civil penalties on behalf of others because he is not an
21 “aggrieved employee,” pursuant to the Private Attorneys General Act, Labor Code sections 2698,
22 *et seq.* or otherwise lacks standing.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 (PAGA - Unconstitutional)

25 21. The Complaint, and each purported cause of action alleged therein, is barred in
26 whole or in part because PAGA is unconstitutionally vague and overbroad as applied to the facts
27 and circumstances of this case.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(PAGA – Unjust Enrichment)

22. Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, is not entitled to recovery of penalties under PAGA to the extent that such penalties are sought in addition to penalties for the same claims and/or time periods, as such duplicative recovery is barred and constitutes unjust enrichment.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Excessive Penalties Unconstitutional)

23. Defendant is informed and believes and, based on such information and belief, alleges, that the penalties claimed by Plaintiff in this case are excessive and thus violate Defendant's rights under the state and federal Constitutions.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Violation of Due Process)

24. Defendant alleges that the penalties imposed by PAGA are excessive, and that the prosecution of a representative action on behalf of the general public as applied to the facts and circumstances of this case would constitute a denial of Defendant's due process rights, both substantive and procedural, guaranteed by Article I, section 7 and Amendment 8 of the California Constitution and in violation of the Fourteenth Amendment to the United States Constitution.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(No Willful Violation of Labor Code Section 203)

25. Plaintiff, and each purportedly aggrieved employee, are not entitled to any penalty award under section 203 of the California Labor Code since, at all times relevant and material herein, Defendant did not willfully fail to comply with the compensation provisions of Cal. Labor Code § 200, *et seq.*, but rather acted in good faith and had reasonable grounds for believing that it did not violate the compensation provisions of Cal. Labor Code § 200, *et seq.*

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Labor Code § 226 – No Injury)

26. Defendant is informed and believes and, based on such information and belief, alleges, that even assuming *arguendo* that Plaintiff and each purportedly aggrieved employee were entitled to receive and were not provided with an accurate itemized statement of wages and deductions, Plaintiff, and each purportedly aggrieved employee are not entitled to recover damages or penalties because Plaintiff, and each purportedly aggrieved employee have not suffered any injury as a result of any alleged inaccurate wage statements and it violates due process to award civil penalties when there has been no injury and/or Defendant pled this affirmative defense to the extent there is a change in the law.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Labor Code § 226 – No Knowing and Intentional Failure)

27. Defendant is informed and believes and, based on such information and belief, alleges, that even assuming *arguendo* that Plaintiff and each purportedly aggrieved employee were not provided with a proper itemized statement of wages and deductions, Plaintiff and each purportedly aggrieved employee are not entitled to recover damages or penalties because Defendant's alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional failure" and it violates due process to award civil penalties in circumstances where an essential element of the alleged Labor Code violation of a knowing and intentional failure has not been satisfied and/or to the extent there is a change in the law.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(CA Labor Code § 2699(e)(2))

28. Defendant alleges that the penalties sought in the Complaint would result in an award that is unjust, arbitrary, oppressive or confiscatory, and Plaintiff should therefore not recover damages or in the alternative, any award of damages should be reduced in an amount determined by the Court.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(CA Labor Code § 2699(f) – Default Civil Penalties)

29. Defendant is informed and believes and, based on such information and belief, alleges, that Plaintiff and/or the purportedly aggrieved employees are not entitled to recovery of default civil penalties under Labor Code section 2699(f) for the alleged violation of Labor Code sections for which civil penalties are specifically provided.

THIRTIETH AFFIRMATIVE DEFENSE

(CA Labor Code § 2699(f) – Initial Violation)

30. Defendant is informed and believes and, based on such information and belief, alleges, that insofar as Defendant has never been cited by the Labor Commissioner, or received a judgment against it in a court of law, with respect to any of Plaintiff's Labor Code claims, any civil penalties awarded to Plaintiff and/or the purportedly aggrieved employees under the PAGA must be limited to those penalties applicable to an initial violation.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Lawful Policy)

31. Defendant is not liable for the unpaid wages alleged by Plaintiff. Defendant's policies complied with California law because it is fair and neutral on its face and compensates employees for all time worked. *See See's Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889 (2012).

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Consent)

32. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the doctrine of consent, to the extent that Plaintiff and/or the purportedly aggrieved employees knowingly and voluntarily consented to and/or participated in some or all of the conduct upon which the claims alleged against Defendant are based.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Laches)

33. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the doctrine of laches, to the extent that Plaintiff unreasonably and inexcusably delayed in pursuing the claims alleged against Defendant, thereby prejudicing Defendant's ability to find witnesses and/or evidence to defend itself in this litigation.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Waiver)

34. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the doctrine of waiver, to the extent that Plaintiff and/or the purportedly aggrieved employees waived the right to recover any relief by the Complaint by virtue of their prior representations, actions, inaction, and agreements (including without limitation any applicable collective bargaining agreement and waivers contained therein) with respect any purported cause of action alleged therein.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

35. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the doctrine of unclean hands, to the extent that Plaintiff and/or the purportedly aggrieved employees have engaged in any inequitable behavior related to the claims alleged against Defendant.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

36. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, to the extent that Plaintiff and/or the purportedly aggrieved employees are estopped by their own conduct to assert any claims against or obtain any award from Defendant.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Arbitration Agreement)

37. Defendant alleges that the Complaint, and each cause of action set forth therein, are barred, in whole or in part, to the extent that, because of a change in the law, Plaintiff, and each purportedly aggrieved employee are subject to binding arbitration of their claims on an individual basis and have waived the right to bring such claims in court.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Uncertainty)

38. Defendant is informed and believes and, based on such information and belief, alleges, the Complaint, and the claims asserted therein, are uncertain.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

39. The Complaint, and each purported cause of action alleged therein, is barred to the extent Plaintiff, and each purportedly aggrieved employee failed to pursue or otherwise exhaust administrative remedies with the California Division of Labor Standards Enforcement and/or the Labor and Workforce Development Agency.

FORTIETH AFFIRMATIVE DEFENSE

(Unmanageable Representative Action)

40. The Complaint, and/or each purported cause of action alleged therein, cannot be maintained on a representative basis due to a multitude of unmanageable individualized issues. Proceeding on a representative basis would deprive Defendant of due process.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Meal Periods Provided)

41. To the extent timekeeping records show incidences where Plaintiff or any other non-exempt employee did not record an off-duty meal period of at least 30 minutes beginning by the end of the fifth hour in a shift greater than five hours, or did not record a second off-duty meal period of at least 30 minutes beginning by the end of the tenth hour in a shift greater than ten hours, Defendant is not liable for failure to provide a meal period because it permitted Plaintiff

1 and the allegedly aggrieved employees a bona fide opportunity to take a compliant meal period but
2 Plaintiff and/or the allegedly aggrieved employees voluntarily chose not to take a timely or
3 compliant meal period(s) Defendant provided and/or waived the meal period.

4 **FORTY-SECOND AFFIRMATIVE DEFENSE**

5 (Unknown Conduct / Outside Course and Scope of Employment)

6 42. Defendant is informed and believes and, based on such information and belief,
7 alleges, that the Complaint and/or each purported cause of action therein cannot be maintained
8 against Defendant to the extent that the acts or omissions alleged in the Complaint were
9 committed outside the course and scope of Plaintiff's employment, were not authorized, adopted
10 or ratified by Defendant, and/or Defendant did not know of nor should it have known of such
11 conduct.

12 **FORTY-THIRD AFFIRMATIVE DEFENSE**

13 (De Minimis Activities)

14 43. Defendant alleges that the Complaint and each cause of action set forth therein, or
15 some of them, cannot be maintained against Defendant to the extent that Defendant's acts or
16 omissions, if any, or Plaintiff or the purportedly aggrieved employees' acts or omissions, and the
17 alleged time involved and/or damages are *de minimis*.

18 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

19 (Clerical Error / Inadvertent Mistake)

20 44. Defendant is informed and believes and, based on such information and belief,
21 alleges, that, even assuming *arguendo* that Plaintiff and each purportedly aggrieved employee
22 were entitled to receive itemized wage statements and were not provided with a proper itemized
23 statement of wages and deductions, Plaintiff, and each purportedly aggrieved employee should not
24 recover damages or penalties to the extent that Defendant's alleged failure to comply with
25 California Labor Code section 226(a) was the result of a clerical error or inadvertent mistake.
26 Labor Code § 226.3.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Unconstitutional Wage Order)

45. Defendant is informed and believes and, based on such information and belief, alleges, that the Complaint and each cause of action therein, or some of them, are barred because the applicable wage orders of the Industrial Welfare Commission are unconstitutionally vague and ambiguous and violate Defendant's rights under the United States Constitution and the California Constitution as to, among other things, due process of law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(Failure to Comply with Employer Instructions)

46. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, to the extent that any failure to comply with Defendant's work-time recording and/or reporting and/or overtime and/or meal or rest break rules, or any other violation alleged in the Complaint, was the result of failure by Plaintiff and/or each purportedly aggrieved employee, to follow Defendant's reasonable instructions, and a breach of duties owed to Defendant under California Labor Code sections 2854, 2856, 2857, 2858 and/or 2859.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Res Judicata, Bar and Merger, Settlement/Release)

47. The Complaint and each cause of action set forth therein, are barred, in whole or in part by the doctrine of res judicata or release, to the extent that any of the claims asserted in the Complaint have been released, whether by Plaintiff, Labor and Workforce Development Agency, or by or on behalf of any of the purportedly aggrieved employees.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

(Collateral Estoppel)

48. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the doctrine of collateral estoppel, to the extent that a previous final judgment or a decision on a collateral issue has resolved Plaintiff's claims.

FORTY-NINTH AFFIRMATIVE DEFENSE

(No Entitlement to Prejudgment Interest)

49. The Complaint fails to state a claim upon which prejudgment interest may be granted because the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

FIFTIETH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

50. Defendant alleges that the Complaint, and each cause of action alleged therein, is barred, in whole or in part, by the doctrine of avoidable consequences, to the extent that Plaintiff and/or the purportedly aggrieved employees unreasonably failed to use Defendant's preventative and corrective measures, which would have prevented some or all of the harm allegedly suffered.

FIFTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

51. Defendant is informed and believes, and based upon such information and belief alleges, that the Complaint, and each purported cause of action alleged therein, is barred to the extent Plaintiff failed to timely invoke and/or fully exhaust administrative remedies available to him under California Labor Code section 98.7.

FIFTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Exhaust Internal and Contractual Remedies)

52. Defendant alleges that the Complaint, and each purported cause of action alleged therein, is barred to the extent Plaintiff failed to exhaust internal remedies and/or contractual remedies, including under any applicable collective bargaining agreements, before filing suit.

FIFTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Utilize Complaint Procedure Including Arbitration)

53. Defendant alleges that the Complaint, and/or some of the claims contained therein, are barred by the failure or refusal of the Plaintiff and/or allegedly aggrieved employees to timely and completely utilize the complaint, grievance, or arbitration procedure established by Defendant or negotiated between the parties.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

(Bad Faith and/or Frivolous Claims)

54. Defendant alleges that Plaintiff's claims are unreasonable, were filed in bad faith, and/or are frivolous and, for such reasons, justify an award of attorneys' fees and costs against Plaintiff and/or his attorneys pursuant to California law including, but not limited to, California Code of Civil Procedure section 128.5 and/or Government Code section 12965(b).

RESERVATION OF RIGHT TO AMEND ANSWER

Defendant hereby gives notice that it intends to rely on such other and further defenses as may become available during discovery in this action and reserve the right to amend the Answer to assert any such defenses.

PRAYER

WHEREFORE, Defendant prays for judgment as follows:

1. That the Complaint be dismissed with prejudice in its entirety;
2. That Plaintiff takes nothing by reason of the Complaint;
3. That Defendant be awarded its costs of suit and reasonable attorneys' fees provided by law; and
4. For such other and further relief as the Court may deem just and proper.

Dated: December 7, 2021

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



PAUL S. COWIE
BRIAN S. FONG
SAMI HASAN
LUIS ARIAS

Attorneys for GRANITE ROCK COMPANY

PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

On December 7, 2021, I served true copies of the following document(s) described as **DEFENDANT GRANITE ROCK COMPANY'S ANSWER TO PLAINTIFF ARNOLD JAQUEZ'S COMPLAINT** on the interested parties in this action as follows:

Karo G. Karapetyan
Joseph A. Gross
Frontier Law Center
23901 Calabasas Road, #2074
Calabasas, CA 91302

karo@frontierlawcenter.com;
joseph@frontierlawcenter.com;
heather@frontierlawcenter.com;
manny@frontierlawcenter.com;
dan@frontierlawcenter.com; Mary Mars
mary@frontierlawcenter.com

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address larago@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 7, 2021, at San Francisco, California.



Lydia Arago Schou

EXHIBIT C

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Manny M Starr (319778); Theodore Tang (313294) Frontier Law Center 23901 Calabasas Road, #2074, Calabasas, CA 91302		Electronically Filed by Superior Court of CA, County of Santa Clara, on 8/19/2021 11:25 AM Reviewed By: R. Tien Case #21CV387540 Envelope: 7096325	
TELEPHONE NO.: (818) 914-3433 FAX NO.: (818) 914-3433 ATTORNEY FOR (Name): Plaintiff,			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: same CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Civil			
CASE NAME: Jaquez v. Granite Rock Company			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 21CV387540
		JUDGE: DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **8**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 8/19/2021

Manny M. Starr

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

EXHIBIT E

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: 21CV387540

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of <_CountyName_> Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Manoukian, Socrates P Department: 20

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 1/11/2022 Time: 3:00 PM in Department: 20

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

EXHIBIT F

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

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Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530